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March 3, 2010

Via Hand Delivery

Thomas S. Burack, Chairman
N.H. Site Evaluation Committee
N.H. Department of Environmental Services
29 Hazen Drive
Concord, NH, 03302

Laidlaw Berlin BioPower, LLC
SEC Docket No. 2009-02

Dear Chairman Burack:

On behalf of Clean Power Development, LLC, I am filing with the NH Site Evaluation Committee an original and 18 copies of a Response to Objection to Petition for Intervention.

Please let me know if you have any questions.

Sincerely,

/s/ James T. Rodier

**STATE OF NEW HAMPSHIRE
SITE EVALUATION COMMITTEE**

SEC DOCKET NO. 2009-02

**Application of Laidlaw Berlin BioPower, LLC, for a Certificate of Site and Facility for a
70MW Biomass Fueled Energy Facility in Berlin, Coos County New Hampshire**

RESPONSE TO OBJECTION TO PETITION FOR INTERVENTION

NOW COMES Clean Power Development, LLC (“CPD”), by and through its attorney, and hereby responds to the objection of Laidlaw Berlin BioPower, LLC (Laidlaw) to CPD’s Petition For Intervention, in support hereof, CPD says as follows:

1. Laidlaw contends that CPD is a business competitor of CPD and, as such, has no substantial interest in this proceeding. In support of its position, Laidlaw argues that “injury resulting from competition is deemed a natural risk in our free enterprise economy and is rarely classified as legal harm” and in support thereof cites The Valley Bank v. State of New Hampshire, 115 N.H. 151, 154 (1975). Laidlaw also contends that CPD does not have “standing” to intervene since it cannot allege any specific harm to it that would result from this proceeding, and that CPD seeks to raise issues that will already be adequately addressed, and are no different from the concerns the public at large.

2. Laidlaw’s contentions are erroneous and misleading.

3. **Laidlaw erroneously conflates the standard for intervention in an administrative proceeding with standing to take an appeal in a court of law.** R.S.A. 541-A: 32, I, requires that a petition for intervention must state “facts demonstrating that the petitioner's rights, duties, immunities or other substantial interests may be affected by the proceeding.” (Emphasis added.) In contrast, in order to have standing in a court proceeding, a party must demonstrate an actual or immediate injury. Accordingly, the standard for intervention in an administrative proceeding is very different from the standard for determining standing for taking an appeal.

4. The Committee has previously allowed CPD to intervene in a very similar proceeding involving the issuance of a certificate of site and facility:

There is no question that CPD has a substantial interest that may be affected by this proceeding. Such interest, moreover, is not limited to narrow issues concerning the

orderly development of the region but concerns the broader issue of whether the Applicant should receive a Certificate. Therefore, CPD's petition to intervene will be granted without limitation.

Order Granting Petitions to Intervene and Revising Procedural Schedule, SEC Docket No. 2008-04 (October 14, 2008) at 3.

4. In addition to allowing intervention when a party states facts demonstrating a substantial interest which may be affected by the proceeding, the Committee may also permit intervention by any party when the presiding officer determines that such intervention would be in the interests of justice:

[B]oth the Administrative Procedure Act and the Committee's rules permit intervention by any party when the presiding officer determines that "such intervention would be in the interests of justice and would not impair the orderly and prompt conduct of the proceedings." See, RSA 541-A: 32, II and N.H. CODE OF ADMINISTRATIVE RULES, Site 202.11.

Id. at 5.

5. Given the facts stated in CPD's Petition to Intervene and the extensive record on CPD plans and capabilities created in SEC Docket No. 2009-03, CPD's participation in the instant proceeding would most certainly be in the interest of justice.

6. The general rule that an injury from business competition does not confer standing for an appeal to a court of law does not apply to competitors in a regulated industry. See, Indeck Maine Energy, LLC, & Others v. Commissioner Of Energy Resources & Others, No. SJC-10332 (August 11, 2009).

7. Counsel for Laidlaw has repeatedly contended that a client that is a business competitor to PSNH has a right to intervene in a proceeding before the Public Commission. See, e.g., NHPUC Docket Nos. DE 07-096 and DE 08-077. Accordingly, Counsel has placed itself in a position where it is advocating contrary positions of law before sister State agencies.

8. CPD's rights and interests will be substantially affected by this proceeding. CPD's interests in Laidlaw's Application are separate and distinct from those interests to be represented by Counsel for the Public. CPD plans to construct, own and operate a biomass facility ("CPD Facility") located in Berlin, New Hampshire which will generate electricity and steam through the combustion of whole tree chips supplied through local markets. The site of the CPD Facility is 20 Shelby Street in Berlin, on land adjacent to the City of Berlin Waste

Water Treatment Plant. The site of the CPD Facility is on the Androscoggin River, approximately 1 ½ miles downstream from the site of the Laidlaw Project.

9. If, as represented by Laidlaw, the PPA with PSNH will have a fuel adjustment clause to track the costs of the biomass fuel and pass those cost on to PSNH's regulated ratepayers, CPD and many other biomass energy producers will be at an extreme economic disadvantage to the Laidlaw Facility.

WHEREFORE, for all of the foregoing reasons, Comes Clean Power Development, LLC respectfully requests the Committee to:

- A. Authorize its intervention in this proceeding as a full party; and
- B. Grant such other and further relief as may be just and equitable.

Respectfully submitted,
CLEAN POWER DEVELOPMENT, LLC
By its Attorney,

Dated: March 3, 2010

/s/ James T. Rodier
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Certificate of Service

A copy of this Objection to Petition for Intervention of Clean Power Development,LLC has been served by electronic mail this 3rd day of March, 2010 to each of the parties on the attached service list and by first class mail to the New Hampshire Attorney General's Office.

/s/ James T. Rodier